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November 29, 2004

Via Electronic Mail
Ms. Jessica Rosenworcel
Legal Advisor, Commissioner Copps
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Unbundled Access to Network Elements, WC Docket No. 04-313; Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; CC Docket No. 01-338

Dear Ms. Rosenworcel:

On November 22, 2004, representatives of WorldNet Telecommunications, Inc. ("WorldNet") met with you regarding the implications of the above referenced docket on competitors and competition in Puerto Rico. During this meeting, the following topics were discussed: 1) how the FCC can implement a regulatory "safety valve" to ensure that national UNE rules do not stifle the development of competition in unique markets such as Puerto Rico; 2) the importance of loop migration rules and standards; and 3) the mechanics of a transition period for migrating from UNE switching to facilities-based switching. The purpose of this letter is to further clarify WorldNet's position on these issues, which are critical to the advancement of telecommunications competition and services in Puerto Rico and similarly situated markets.

I. Regulatory Safety Valve

As discussed in previous filings in this proceeding, WorldNet believes that the facts in the record clearly demonstrate that the development of competitive market conditions in Puerto Rico is significantly behind the rest of the country. The only objective and appropriate party to examine the issue, the Telecommunications Regulatory Board of Puerto Rico, has made this very finding based upon record evidence. For this reason, WorldNet believes that Puerto Rico must be specifically excluded from any national finding of no impairment for UNE mass market switching. However, if the Commission determines that it cannot do this (even though WorldNet believes it can and should, particularly given the DC Circuit's mandate to undertake a market-by-market analysis, including considering discrete geographic markets) then the Commission must, at a minimum, create a waiver process for mass-market switching and high capacity loops and transport similar to that upheld by the

D.C. Court of Appeals in its *USTA II* decision with respect to enterprise switching. This process should include at least three components: 1) a clear process for the development by state commissions of a localized, granular factual record regarding the existence of impairment within a specific timeframe, 2) a procedure whereby a state public utility commission may file a petition with the Commission within a specific timeframe when it determines that facts developed in its fact-finding proceeding demonstrate that a UNE should be listed or delisted; and 3) reservation by the Commission of ultimate authority to determine, within a specific timeframe, whether a UNE should be listed or delisted in the relevant local markets. Finally, there should be no time limit on when a waiver petition can be filed with the Commission.

In developing this process, it is critical that the Commission include specific timeframes for both state and Commission action. This will promote efficiency on the part of the parties and the regulatory authorities. It will also promote regulatory certainty by avoiding open-ended regulatory proceedings. With regard to the state level proceedings, the Commission should establish a one hundred and twenty (120) day timeframe from the date of the filing of a petition for a state commission to hold a fact-finding proceeding and issue a recommendation to the Commission. If the state Commission does not meet this timeframe, a party should be permitted to petition the Commission to review the UNE status directly. The Commission, in turn, should place the state commission recommendation on public notice, collect comments and reply comments on an expedited basis, and render its decision within forty-five (45) days from the date of submission by the state commission.

The Commission should also adopt standards and criteria to guide the state level review. The standards and criteria established by the Commission in the Triennial Review Order could be employed to guide state and subsequent federal review. When a state commission determines that conditions in a given market warrant the filing of a recommendation for delisting or relisting a network element, the Commission should require that any filing include findings of fact that support the recommendation, a summary of the process used to compile the record, and attach the portions of the record relied upon. This will ensure that the Commission has before it a full record containing all the relevant facts necessary to reach an informed decision.

As the Commission recognized in the Triennial Review Order, it should also create a process allowing it to directly review petitions where a state is unwilling or unable to fulfill a fact-finding role. The Commission should adopt a model similar to that contained in Section 252(e)(5) of the Act, where if the state commission does not act within a given timeframe, the Commission can review the matter directly. In such cases, parties should be permitted to submit their UNE delisting / relisting petitions directly to the Commission. However, instead of waiting for the entire 120-day period (set forth above) permitted for state review to expire, the Commission should permit parties to apply to the Commission directly if the state commission has not acted within thirty (30) calendar days of the filing of a petition. This will give the state commission ample time to either docket cases and begin proceedings, or expressly or impliedly refuse to conduct a proceeding. It will also serve the goal of streamlining this process and avoid essentially doubling the timeframe for resolution of these matters in those markets where a state commission declines to fulfill this fact-finding role.

II. Loop Migration

It is critical that the Commission ensure that ILECs have a demonstrated capability to perform loop migrations (including batch hot cuts) before lifting the mass market switching requirement. This is especially critical in markets such as Puerto Rico that have not been subject to the review process set forth under Section 271 of the Act. In Puerto Rico, the ILEC has never been subject to Section 271 and consequently has not had the incentive necessary for it to develop commercially reasonable loop migration processes. If the Commission lifts UNE switching obligations without first either creating loop migration requirements and standards, or expressly permitting the state commissions to create them, a significant barrier to the execution of a facilities-based strategy will remain in Puerto Rico and similarly situated markets.

This is true even if the Commission establishes a transition mechanism governing existing UNE switching arrangements. A transition mechanism alone will not provide assurance that future ILEC customers would be migrated to a competitor in a timely and efficient manner. Without legal standards and direct regulatory oversight governing loop migration, the ILECs will remain in a position to frustrate competitive entry after the expiration of any transition period. For this reason, regardless of the length or mechanism that the Commission adopts for UNE switching migration, the Commission must ensure that there are either federal loop migration rules and standards, or some mechanism for state commissions to adopt such rules and standards.

The Commission should adopt rules expressly permitting state commissions to create rules governing loop migration. Allowing states to craft these rules is in keeping with the savings clause contained in Section 251(d)(3), which preserves the Commission's scarce resources and permits the regulator that is most familiar with the facts relating to a specific market to make the necessary findings and craft a loop migration process appropriate for a given market. Expressly creating a process for state implementation of a loop migration process is especially critical where there have been no state or federal proceedings under Section 271, which led to detailed performance measures and anti-backsliding regimes in many states. Because of these state level performance metrics, the issue of future loop migration standards are not as acute in many markets on the mainland that were subject to Section 271 than there are in areas like Puerto Rico where Section 271 never was applied.

III. Transition Period

As we discussed in our meeting, it is critical that the Commission keep the status quo in place until the incumbent has demonstrated that it can migrate its existing UNE-P services to other arrangements in a reliable and orderly manner. Otherwise, as WorldNet experienced in its transition from resale to UNE-P, its customers face the almost certain prospect of significant service disruptions. Further, competitors should be permitted to continue to add new customers under existing arrangements until a migration process is in place. Imposing a cutoff date for new customers that differs from the overall transition timeframe is extremely disruptive to competitors operations, sales and marketing efforts and would have the effect of virtually paralyzing all new customer growth until the migration has been completed.

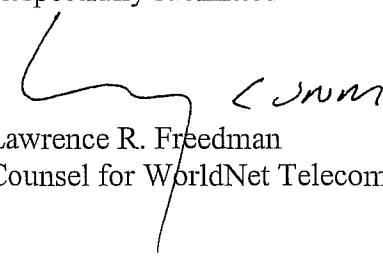
With regard to the express timeframe for a transition period, as discussed WorldNet is less concerned with the actual transition time than it is with ensuring that the ILEC has both the obligation and the physical capability to migrate UNE-P lines to other arrangements. Accordingly, any transition timeframe must be premised upon the demonstrated existence of a functioning and robust loop migration process by the ILEC in the relevant market. This is consistent with the approach the Commission took in the Triennial Review Order, which was not directly overturned by *USTA II.*

Where there has been no state or federal finding that loops or UNEs are available to competitors in accordance with Section 271 of the Act, the Commission should extend any transition period to provide time for the state commission to adopt loop migration rules and standards. WorldNet believes that state commissions should be given at least nine (9) months to complete proceedings implementing loop migration rules and standards. Even then, any transition period (which should allow for at least 12 to 18 months) should not begin to run until the state commission determines that the ILEC has demonstrated the ability to perform timely loop migrations. Ensuring that there are appropriate loop migration mechanisms in place prior to any compulsory migration takes place is important for maintaining stability and reducing uncertainty as customer bases are migrated from one platform to another.

IV. Conclusion

The retention of meaningful access to ILEC customers constitutes one of the most significant and critical issues to the maintenance and future development of telecommunications competition in Puerto Rico. WorldNet believes that the facts on the record in this proceeding clearly show that competitors are impaired in Puerto Rico without access to UNE switching. If the Commission cannot make a local finding that competitors are impaired without access to UNE switching in Puerto Rico, WorldNet believes that at a minimum the Commission must create a robust "safety valve" process that permits both ILECs and CLECs to petition to have UNEs delisted and relisted. Such a process would be a legally and practically viable way to ensure that the Commission's UNE rules reflect the market conditions in unique localized markets such as Puerto Rico. Further, the Commission must expressly permit state commissions to create loop migration processes to ensure that meaningful rules and standards governing ILEC loop migration are in place. Any transition period established by the Commission must only commence after state commissions have been given time to implement operational loop migration rules.

Respectfully submitted



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